



## NON-CRIMINALIZATION OF VICTIMS FOR CRIMES COMMITTED IN THE COURSE OF BEING TRAFFICKED

**T**rafficking victims are often compelled to commit crimes, which can blind authorities to the victim behind the “criminal” they first encountered. A 14-year-old sex trafficking victim, for example, may be charged with prostitution-related charges. Foreign domestic workers who have fled domestic servitude maybe in violation of immigration laws. Should an uninformed or untrained official come across any of these individuals, or if the government lacks standardized identification procedures, these trafficking victims are likely to face arrest, penalization, incarceration, or deportation.

The U.S. anti-trafficking legislation, the Trafficking Victims Protection Act, requires the protection of trafficking victims and requires the Department of State to take into account, as part of its assessment of foreign government actions for this Report, whether foreign governments are ensuring that trafficking victims are not inappropriately incarcerated. Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the United Nations Office of the High Commissioner for Human Rights provides that “[t]rafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

As governments around the world work to improve their anti-trafficking efforts, it is critical that officials—including police,

immigration, and social services staff—be able to distinguish trafficking victims from criminals. Through a process of appropriately questioning the victim and observing his or her situation—often referred to as a standard identification or screening process—officials are empowered to make an informed determination. Officials should be trained on trafficking indicators: for example, does the person appear to be or report being controlled by someone else? Does he or she show signs of abuse? Does he or she appear fearful?

Identifying the victim is critical to understanding and prosecuting the true crime that has taken place, and ensuring adequate care and support to trafficking victims facilitates their ability to provide testimony in the prosecution of offenders. Treated as criminals, victims can be traumatized by placement in jail and will be less effective witnesses. Further, if victims are treated as criminal and deported they will be unable to support the investigation. This all-too-common practice suppresses the best evidence of trafficking and gets rid of the evidence—undermining prosecutions and often fatally compromising the government’s ability to

prosecute a case successfully. Treating victims as what they are, not as criminals, is at the heart of the victim-centered approach to combating trafficking. In the United States, one effort to ensure the non-criminalization and protection of trafficking victims is “safe harbor legislation,” recently enacted by several states, which protects minor sex trafficking victims by providing them immunity from prosecution.

